

Appl. No. 10/541,949  
Amtd. Dated October 6, 2008  
Reply to Office Action of August 8, 2008

### **REMARKS/ARGUMENTS**

Claims 1, 4, 7, and 9-11 are pending in the instant application.

The following remarks are believed to be fully responsive to the Office Action.

### **DOUBLE PATENTING REJECTION SHOULD BE WITHDRAWN**

Claims 1, 4, 7, and 9-10 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1 to 10 of copending Application No. 10/559,880. The Examiner should note that the present application was filed prior to Application No. 10/559,880. Application No. 10/559,880 was filed on 07/08/2005 and not 06/07/2006 as noted as the filing date on the front page of the present Office Action. The provisionally double patenting rejection should therefore be withdrawn in accordance with M.P.E.P § 804. Applicants note that M.P.E.P § 804 recites:

If "provisional" ODP rejections in two applications are the only rejections remaining in those applications, the examiner should withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a terminal disclaimer.

Therefore, Applicants respectfully submit that the double patenting rejection should be withdrawn.

### **REJECTION UNDER U.S.C. §102 SHOULD BE WITHDRAWN**

Claims 1, 4, 7, and 9-11 stand rejected under U.S.C. § 102(e). Cuthbertson et al. (WO 03/006491) ("Cuthbertson") is considered to be "by another" because it allegedly has a different inventive entity than that of the instant application (additional Inventors).

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In response, in accordance with MPEP 706.02(I)(2), Applicants respectfully submit that both the present application 10/541,949 and Cuthbertson were, at the time the invention of application 10/541,949 was made, were both owned by Amersham Health AS (now GE Healthcare AS). Applicants attach copies of assignments recorded in the U.S.P.T.O. which convey the entire rights in the applications to Amersham Health AS for application no. 10/541,949 (now GE Healthcare AS) and GE Healthcare AS for application no. 10/559, 880. Additionally, in accordance with MPEP 706.02(I)(3), Applicants submit that Cuthbertson qualifies as prior art under 35 U.S.C. 102(e) and Cuthbertson was used as an obviousness rejection under 103(a).

Thus, Applicants respectfully submit that the present invention is now in condition for allowance. Reconsideration and withdrawal of the rejection are respectfully requested.

**REJECTION UNDER U.S.C. §103 SHOULD BE WITHDRAWN**

Claims 1, 4, 7, and 9-10 stand rejected under U.S.C. § 103(a) as being unpatentable over Klaveness et al. (US 6,264,914) (“Klaveness”) in view of Cuthbertson et al. (WO 03/006491) (“Cuthbertson”). This rejection is respectfully traversed.

It is correct that Klaveness discloses compositions of the formula V-R-L with the meanings of V and L as stated in the Office Action. It is also correct that the reporter group R includes chelated metal radionuclides. However, Klaveness does not mention the chelator of formula (II) which is in independent claim 1. Therefore, claim 1 would not be obvious over Klaveness since this citation fails to disclose, suggest, or teach the chelator of formula

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(II) of the present invention as noted by the Examiner in the previous Office Action dated August 24, 2007.

Additionally, Cuthbertson discloses compounds of formula II of claim 1 and of formulae of claim 4. However, and more importantly, the subject matter as a whole would not have been obvious at the time the invention was made to a person having ordinary skill in the art. The invention of Cuthbertson was first made publicly available on January 23, 2003 by the publication of WO03/006491 for GE Healthcare AS with the inventors Alan Cuthbertson, Dadfinn Lovhaug, Anthony Eamon Storey, Harry John Wadsworth, Nigel Anthony Powell, Phillip Duncanson, and Magne Solbakken. The present patent application takes priority from January 9, 2003, Norwegian Patent Application 20030115 of Amersham Health AS (now GE Healthcare AS) with the inventors Magne Solbakken, Torgrim Engell, Harry John Wadsworth and Colin Archer. As set forth in the above section, Cuthbertson is not prior art since Cuthbertson and the present invention are not described in a published application for a patent by another filed in the U.S. before the invention by Applicants. Cuthbertson is therefore not available as obviousness prior art under U.S.C. § 103(a) since the subject matter and the claimed inventions were owned by the same party as set forth above. Reconsideration and withdrawal of the rejection are respectfully requested.

Claim 11 stands rejected under U.S.C. § 103(a) as being unpatentable over Klaveness et al. (US 6,264,914) (“Klaveness”) in view of Cuthbertson et al. (WO 03/006491) (“Cuthbertson”). This rejection is respectfully traversed.

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Since claim 11 is dependent on claim 1 and claim 1 is now allowable then Applicants respectfully request that this claim rejection be withdrawn and claim 11 allowed.

## SPECIFICATION

The Application includes a drawing, but there is NO BRIEF DESCRIPTION OF THE DRAWINGS section included in the specification.

In reply, in order to expedite prosecution, Applicants respectfully request the deletion of both figure 1 and the quoted sentence found on the bottom of page 2 stating “The RAAS system is illustrated schematically in Figure 1 hereto which is based on Figure 1 in the article by Foote et al. in Ann. Pharmacother. 27: 1495-1503 (1993).”

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## CONCLUSION

Applicants respectfully hold that the claims submitted herewith fulfill the requirements of a patentable invention and that all rejections and objections be withdrawn and claims 1, 4, 7, and 9-11 be allowed.

The Examiner is invited to telephone the undersigned in order to resolve any issues that might arise and to promote the efficient examination of the current application.

Respectfully submitted,

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